16977

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 581.

DAVID BROWN, APPELLANT,

vs.

Ethan A. Hitchcock,
~~CORNELIUS N. BLISS,~~ SECRETARY OF THE INTERIOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 31, 1898.

(17,166.)

16
80

80
16
400
80

(17,166.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 581.

DAVID BROWN, APPELLANT,

vs.

CORNELIUS N. BLISS, SECRETARY OF THE INTERIOR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Page.
Caption	1
Transcript from supreme court of the District of Columbia	1
Caption	1
Bill of complaint	1
Demurrer	1
Decree dismissing bill; appeal and amount of appeal bond fixed	6
Citation	7
Memorandum: Appeal bond filed	7
Clerk's certificate	8
Argument	8
Opinion	9
Decree	9
Order allowing appeal	13
Bond on appeal	13
Citation	13
Acceptance of service of citation	15
Clerk's certificate	16
	16

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

In the Court of Appeals of the District of Columbia

DAVID BROWN, Appellant,
vs.
CORNELIUS N. BLISS, Secretary of the Interior. } No. 826.

a Supreme Court of the District of Columbia.

DAVID BROWN
vs.
CORNELIUS N. BLISS, Secretary of the Interior. } No. 19363. In Equity.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill in Equity.*

Filed May 10, 1898.

In the Supreme Court of the District of Columbia, the 10th Day of May, A. D. 1898.

DAVID BROWN, Plaintiff,
vs.
CORNELIUS N. BLISS, Secretary of the Interior, Defendant. } Number 19363, Equity Docket 44.

To the supreme court of the District of Columbia, holding an equity court:

The plaintiff states as follows:

1. He is a citizen of the State of California and resides at the city of San Francisco, in said State of California, and brings this suit in his own right.

2. The defendant is a citizen of the United States and a resident of the District of Columbia, and is the Secretary of the Interior of the United States, and is sued in this action as such Secretary of the Interior.

3. That, as plaintiff is informed and believes, in accordance with the provisions of the act of the Congress of the United States entitled "An act to enable the State of Arkansas and other States to

reclaim the swamp lands within their limits," and approved the 28th day of September, A. D. 1850, and in pursuance of the provisions of the act of the Congress of the United States entitled "An act to extend the provisions of 'An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits' to Minnesota and Oregon, and for other purposes," and ap-
2 proved the 12th day of March, A. D. 1860, and within the time limited by the second section of said last-mentioned act, the State of Oregon selected certain lands, including the lands hereinafter described, as swamp and overflowed lands, made unfit thereby for cultivation, and granted to said State by the terms of the acts aforesaid.

4. That, as plaintiff is informed and believes, said selection of said lands was examined by the Secretary of the Interior, and the said Secretary of the Interior, then Mr. Henry M. Teller, adjudged and determined that certain of said lands so selected, including the lands hereinafter described, were swamp and overflowed lands, made unfit thereby for cultivation, within the meaning of the acts aforesaid; that the same remained unsold at the times of the passage of the acts aforesaid, and that the same did not include any lands which the Government of the United States had reserved, sold, or disposed of in pursuance of any law enacted before the passage of the act last hereinbefore mentioned; and then and there, on the 16th day of September, A. D. 1882, the said Secretary of the Interior, Mr. Henry M. Teller, made out an accurate list and plats of the lands so adjudged and determined by him to be swamp and overflowed lands, as aforesaid, and transmitted the same to the governor of the State of Oregon, which list was denominated and will hereinafter be referred to as "list number 5."

5. That thereafter, as plaintiff is informed and believes, on the 5th day of March, A. D. 1885, the said Henry M. Teller ceased to be the Secretary of the Interior, and on said day Mr. Lucius Q. C. Lamar was appointed the Secretary of the Interior in his place.

3 6. That, as plaintiff is informed and believes, up to and at the time that the said Henry M. Teller ceased to be the said Secretary of the Interior and at the time that the said Lucius Q. C. Lamar assumed the duties of said office there were not and had not been any settlers on any of the lands hereinafter described and so included in said "list number 5" nor any claimants thereto other than the State of Oregon and its assignees as hereinafter stated, nor were there nor had there been pending before the said Secretary of the Interior or before the Land Department of the United States any proceeding or proceedings whatever for the annulment, cancel-ation, or suspension of the said "list number 5" or for the revocation, alteration, or modification of the said determination and judgment of the Secretary of the Interior approving said list and adjudging and determining that the lands therein contained were swamp and overflowed lands within the meaning of the acts aforesaid, nor any proceeding or proceedings in any way affecting the lands hereinafter described.

7. That on the 26th day of July, A. D. 1880, one H. C. Owen purchased from the State of Oregon certain of the lands so described in said "list number 5," which lands so purchased by the said H. C. Owen are situated in the county of Harney, State of Oregon, and are described as follows:

The southeast quarter and the east half of the northeast quarter of section twelve, the south half of the northeast quarter of section thirteen, the southeast quarter of the northeast quarter and the east half of the southeast quarter of section fourteen, the east half of section twenty-three, the south half of the northwest quarter, the southwest quarter, the west half of the southeast quarter, and the southeast quarter of the southeast quarter of section twenty-four; all in township twenty-five south, range thirty-one east, of
4 Willamette meridian.

The north half of the southwest quarter and the northwest quarter of the southeast quarter of section eight, the south half of the south half of section nineteen, the south half of the south half of section twenty, the southeast quarter of the southwest quarter and the south half of the southeast quarter of section twenty-one, the south half of the south half of section twenty-two, the southeast quarter of the northwest quarter and the west half of the west half of section twenty-six, lots two and four of section twenty-six, the southwest quarter of the northeast quarter, the east half of the northeast quarter, the southeast quarter, and the southwest quarter of the southwest quarter of section twenty-seven; the northwest quarter of the northeast quarter, the north half of the northwest quarter, and the south half of the southeast quarter of section twenty-eight; the north half of the northeast quarter of section twenty-nine, the south half of the southwest quarter and the southeast quarter of section thirty-two, all of section thirty-three, all of section thirty-four, all of section thirty-five; all in township twenty-five south, range thirty-two east, of Willamette meridian.

The southeast quarter of section one, the south half of section three, the south half of the southeast quarter of section four, the east half of section nine, all of section ten, the northeast quarter of section twelve, all of section fifteen, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the north half of the northwest quarter, the southeast quarter of the northwest quarter, the south half of the southwest quarter, and the
5 southeast quarter of section seventeen; the north half of section twenty-one, the north half and the northeast quarter of the southeast quarter of section twenty-two, the southwest quarter of section twenty-three; all in township twenty-six south, range thirty-one east, of Willamette meridian.

Lots one, two, three, and four of section four, all of fractional section five, the fractional south half of the southwest quarter and the east half of section six; all in township twenty-six south, range thirty-two east, of Willamette meridian.

8. That thereafter, by divers mesne conveyances, the title of the said H. C. Owen to the lands aforesaid vested in this plaintiff, and on the 4th day of April, A. D. 1898, the State of Oregon, in pur-

suance of said sale and conveyances, made, executed, and delivered to this plaintiff its patent, in due form of law, under the seal of said State, for the lands aforesaid.

9. That, as plaintiff is informed and believes, on the 6th day of December, A. D. 1887, the said Lucius Q. C. Lamar ceased to be said Secretary of the Interior, and Mr. William F. Vilas was appointed and became Secretary of the Interior in his stead.

10. That, as plaintiff is informed and believes, on the 27th day of December, A. D. 1888, the said Secretary of the Interior, then the said William F. Vilas, made and entered an order annulling, canceling, and revoking the said "list number 5" and the approval thereof, and annulling and revoking the said judgment and determination so made by his said predecessor in said office, the said Henry M. Teller, whereby his said predecessor had adjudged and determined that the lands aforesaid were swamp and over-
6 flowed lands within the meaning of the acts aforesaid, and made and entered an order purporting to adjudge and determine that certain of the lands described in said "list number 5," including the lands hereinbefore described, were not swamp and overflowed lands within the meaning of the acts aforesaid.

11. That thereafter, as plaintiff is informed and believes, divers proceedings were taken before the said Secretary of the Interior and in the General Land Office of the United States by the State of Oregon and by the grantors of this plaintiff to set aside and have held for naught the orders and rulings so made by the said William F. Vilas as such Secretary of the Interior, which proceedings came to an end within one year last past.

12. That, as plaintiff is informed and believes, since the said proceedings last aforesaid came to an end, the defendant, as such Secretary of the Interior, is proceeding to put in force and to carry out the orders and rulings so as aforesaid made by the said William F. Vilas as such Secretary of the Interior and to hold the lands hereinbefore described to be public lands of the United States and subject to entry under the laws of the United States, and threatens and intends to receive and permit the officers of the Land Department of the United States to receive applications for and allow entries of the lands aforesaid as public lands of the United States.

13. The plaintiff is advised and believes that upon the approval and transmission of the said "list number 5" by the said Henry M. Teller as such Secretary of the Interior—that is, on the 16th day of September, A. D. 1882, or before that time—the title to said lands vested in fee in the State of Oregon and its assignees as afore-
7 said, so that thereafter it was not within the power of the then Secretary of the Interior or of any of his successors in office or of any officer of the Government of the United States effectively to revoke such approval or to revoke or annul the orders, rulings, and determinations made in that behalf by the said Henry M. Teller as such Secretary of the Interior, or to injuriously affect the rights of the State of Oregon or of its assignees or of this plaintiff to the lands aforesaid.

14. That, as plaintiff is informed and believes, the execution of

the said order of the 27th day of December, A. D. 1888, so made by the said William F. Vilas as such Secretary of the Interior, will throw a cloud upon the title of this plaintiff to the lands aforesaid, and is likely to cause many persons to attempt to settle upon the said lands and to enter the same in the Land Department of the United States as public lands of the United States subject to such entry, and that plaintiff will be unable to remove such persons from said lands or to quiet his title thereto as against them without a multiplicity of suits, and that therefore this plaintiff is entitled in this court to an order enjoining and restraining the defendant, as such Secretary of the Interior, and his subordinate officers of the Land Department of the United States, from in any way carrying said last-mentioned orders and rulings into effect, and from permitting any entries upon said lands or holding the same open to entry, and from in any way interfering with or embarrassing the plaintiff in his title and ownership of the lands aforesaid.

15. That, as plaintiff is informed and believes, the value of the said lands hereinbefore described is the sum of twenty thousand dollars ($20,000.00) and upwards.

8 Wherefore plaintiff prays:

First. That the said order of December 27th, A. D. 1888, so far as the same may relate to or purport to affect the lands of the plaintiff hereinbefore described, be canceled and annulled by this court and declared to be void and of no effect.

Second. That it may please the court to grant to the plaintiff a writ of injunction restraining the defendant and his subordinate officers of the Land Department of the United States from executing or in any way carrying into effect the said order of the 27th day of December, A. D. 1888, and from holding the lands aforesaid or any thereof to be public lands of the United States, or subject to entry as such, and from receiving or acting upon any applications or entries for the same or any part thereof, and from in any way interfering with or molesting the plaintiff in his title to and enjoyment of the lands aforesaid.

Third. For such other and further relief as may be agreeable to equity and good conscience.

Fourth. That it may please the court to grant unto the plaintiff a writ of subpœna to be directed to the said Cornelius N. Bliss, as such Secretary of the Interior, commanding him, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court, and then and there upon his oath full, true, direct, and perfect answer make to all and singular the premises, and, further, to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court shall seem agreeable to equity and good conscience.

DAVID BROWN, *Plaintiff.*

9 STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

Now comes David Brown, the plaintiff above named, and, being duly sworn, says:

I am the plaintiff in the above-entitled action; I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

DAVID BROWN.

Subscribed and sworn to before me this 23rd day of April, A. D. 1898.

[SEAL.] JAMES L. KING,
Notary Public in and for the City and County of San Francisco, State of California.

In my opinion, upon the instructions given to me and upon the case laid before me, there is good ground for the foregoing suit in the manner in which it is framed.

CHARLES A. KEIGWIN,
Solicitor for Plaintiff.

10 *Demurrer to Bill.*

Filed June 10, 1898.

In the Supreme Court of the District of Columbia.

DAVID BROWN, Plaintiff,
vs.
CORNELIUS N. BLISS, Secretary of the Interior, Defendant.
} No. 19363, Equity Docket 44.

The demurrer of Cornelius N. Bliss, Secretary of the Interior, defendant, to the bill of complaint of David Brown, the above-named plaintiff.

This defendant, by protestation, not confessing any or all of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same *is* therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that the said bill doth not contain any matter of equity whereon this court can ground a decree or give to the plaintiff any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendant doth demur thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WILLIS VAN DEVANTER,
Assistant Attorney General, Solicitor and of Counsel for Defendant.

11 I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

WILLIS VAN DEVANTER,
Of Counsel for Defendant.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

Cornelius N. Bliss, being first duly sworn, deposes and says that he is the Secretary of the Interior of the United States, and as such is the defendant in the above-entitled suit, and that the foregoing demurrer is not interposed for delay.

CORNELIUS N. BLISS.

Sworn to before me this 9th day of June, 1898.

W. BERTRAND ACKER,
Notary Public in and for D. C.

[SEAL.]

12 *Decree.*

Filed Jun- 28, 1898.

In the Supreme Court of the District of Columbia.

DAVID BROWN
vs.
CORNELIUS N. BLISS, Secretary of the Interior. } Equity. No. 19363.

This cause coming on to be heard upon the demurrer interposed by the defendant to the complainant's bill, and the same having been argued by counsel and considered by the court, it is this 28th day of June, A. D. 1898, adjudged, ordered, and decreed—

That the complainant's bill filed herein be, and the same is hereby, dismissed, and his prayer for injunction against the defendant is denied, and from this decree the complainant, by his counsel, here, now, in open court, prays an appeal to the Court of Appeals of the District of Columbia, and the same is allowed to him, and the penalty of the appeal bond is fixed in the sum of $50.00.

W. S. COX, *J.*

O K.
WILLIS VAN DEVANTER, *For Def't.*

13 Filed Jun- 30, 1898. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

DAVID BROWN
vs.
CORNELIUS N. BLISS, Secretary of the Interior. } No. 19363. In Equity.

The President of the United States to Cornelius N. Bliss, Secretary of the Interior, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia on the 28th day of June, 1898, wherein David Brown is appellant and you are appellee, to show cause, if any there be,

why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 28th day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 30th day of June, 1898.

WILLIS VAN DEVANTER,
Attorney for Appellee.

14 *Memorandum.*

June 30, 1898.—Appeal bond filed.

15 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

[Ten-cent U. S. internal-revenue stamp, canceled July 6, '98, J. R. Y.]

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 14, inclusive, are true copies of originals in cause No. 19363, in equity, wherein David Brown is complainant and Cornelius N. Bliss, Secretary of the Interior, is defendant, as the same remains upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 6th day of July, A. D. 1898.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 826. David Brown, appellant, *vs.* Cornelius N. Bliss, Secretary of the Interior. Court of Appeals, District of Columbia. Filed Jul- 8, 1898. Robert Willett, clerk.

9 FRIDAY, *October 6th, A. D.* 1898.

DAVID BROWN, Appellant,
vs.
CORNELIUS N. BLISS, Secretary of the Interior. } No. 826.

The argument in the above-entitled cause was commenced by Mr. C. A. Keigwin, attorney for appellant, and was continued by Mr. Assistant Attorney General Van Devanter, attorney for the appellee, and was concluded by Mr. C. A. Keigwin, attorney for the appellant.

10 DAVID BROWN, Appellant,
vs.
CORNELIUS N. BLISS, Secretary of the Interior. } No. 826.

Opinion.

Mr. Chief Justice ALVEY delivered the opinion of the court:

The bill in this case was filed by the appellant to obtain an injunction against Hon. Cornelius N. Bliss, as Secretary of the Department of the Interior, to restrain that official from disposing of certain lands in Harney county, in the State of Oregon, as part of the public lands of the United States. The lands in question are claimed to be a part of the swamp and overflowed lands situated in the State of Oregon and granted to that State by the United States under and by virtue of the act of Congress of September 25, 1850 (9 Stat., 519), and the act of extension of March 12, 1860 (12 Stat., 3); and the appellant sets up and makes claim to the lands described in the bill, under and through the State of Oregon.

The appellee, the defendant below, demurred to the bill, and, upon hearing, the court below sustained the demurrer and dismissed the bill, and from that order this appeal was taken.

The prayer of the bill is, that a certain order made by a preceding Secretary of the Interior, the Hon. William F. Vilas, on the twenty-seventh of December, 1888, so far as the same may relate to or affect the lands described in the bill, may be cancelled and annulled and declared void and of no effect; and that the defendant and his subordinate officers of the Land Department of the United States may be restrained by injunction from executing or in any way carrying into effect the said order of the twenty-seventh of December, 1888, and from holding said lands or any part thereof to be public lands of the United States or subject to entry as such, and from receiving or acting upon any applications or entries for the same or any part thereof, and from in any way interfering with or molesting the plaintiff in the enjoyment of his title to said lands, and for general relief.

The act of Congress of September 28, 1850, ch. 84, is entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," and by that act it is provided

that in each State the whole of the "swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State;" and that it should be the duty of the Secretary of the Interior, as soon as might be practicable, "to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State," and at his request "cause a patent to be issued to the State therefor; and, on that patent, the fee-simple to said lands shall vest in said State, subject to the disposal of the legislature thereof." 9 Stat., 519. And by the act of March 12, 1860, ch. 5, the provisions of the act of 1850 were extended to the State of Oregon, "provided that the grant hereby made shall not include any lands which the Government of the United States may have reserved, sold or disposed of (in pursuance of any law heretofore enacted), prior to the confirmation of title to be made under the authority of said act." 12 Stat., 3.

This is a summary or an abbreviated statement of the provisions of the congressional legislation upon the subject of the swamp and overflowed lands of the United States, located in the several States, as made by the Supreme Court of the United States, in the case of Warner Valley Stock Co. *v.* Smith, 165 U. S., 28, 29, on appeal taken from this court.

The facts of the case are not in any manner complicated, nor are they numerous in detail. The bill alleges that Hon. Henry M. Teller, as Secretary of the Interior, adjudged and determined that the lands in controversy were swamp and overflowed lands enuring to the *the* State of Oregon under the legislation of Congress, and that the said Secretary of the Interior, then and there, on the sixteenth of September, 1882, made out an accurate list and plats of said lands, together with other lands embraced in said determination, and transmitted the same to the governor of the State of Oregon—the list being denominated as "list No. 5."

That said Secretary Teller was succeeded in the Department of the Interior by the Hon. Lucius Q. C. Lamar, March 5, 1885, but up to that time no proceeding whatever had been initiated looking to the vacation or annulment of "list No. 5," or of the action and determination of Secretary Teller, in regard to said lands.

That Secretary Lamar was succeeded in office by the Hon. William F. Vilas, on December 6, 1887, and that, on December 27, 1888, said Vilas, as Secretary, annulled, cancelled and revoked said "list No. 5," and annulled and revoked the determination of his predecessor in office, Secretary Teller, and thereupon himself adjudged and determined that said lands were not swamp and overflowed, within the meaning and intent of the statute.

11 It is further alleged in the bill that after the proceedings just recited, there were divers proceedings taken before the Secretary of the Interior and in the General Land Office, by the State of Oregon, and by the grantors of the plaintiff, to set aside and have held for nought the action and determination of said former Secretary Vilas, which proceedings came to an end within a year before the filing of the present bill, and that the present Secre-

tary of the Interior, the Hon. Cornelius N. Bliss, is proceeding to put in force and carry out the action of the former Secretary Vilas, and hold the lands described in the bill to be public lands of the United States, subject to entry under the laws thereof, relating to the public lands of the Government of the United States.

The plaintiff then proceeds to allege the ground of his claim and pretension, and the principle upon which he seeks relief of the court. He alleges that he is advised and believes that upon the approval and transmission of the said "list No. 5" by the said Teller, as Secretary of the Interior, the title to said lands vested in fee in the State of Oregon and its assignees or grantees, so that thereafter it was not within the power of the then Secretary of the Interior, or of any of his successors in office, or of any officer of the Government of the United States, effectively to revoke such approval, or to revoke or annul the orders, rulings, and determination made in that behalf by the said Secretary Teller, as such Secretary, or to injuriously affect the rights of the State of Oregon, or of its assignees or grantees, or of the plaintiff, to said lands. And further, that the action of the present Secretary casts a cloud upon the title of the plaintiff to the lands, which he has acquired from and through the State of Oregon.

Upon the case thus made by the bill, and admitted by the demurrer, the appellant, the plaintiff below, has sought to maintain two main propositions: First, that the making, approval, and transmission of the "list No. 5" to the governor of the State of Oregon, was a *final decision* by the Secretary of the Interior, the effect of which was to vest in the State the title to the lands in question beyond all further control of the Land Department, notwithstanding that no patent has ever been issued to the State by the Land Department, and which title could be divested only by the judgment of a court. And, second, whatever may be the power of the particular Secretary making the original decision as to the character of the lands, and approving and certifying to the governor of the State the list of such lands, as directed by the statute, that decision was so far final that it could not be reversed or set aside by any successor in office of the Secretary who rendered the decision in the first instance.

The first of these propositions has been considered and decided by this court in the case of Warner Valley Stock Co. *v.* Smith, 9 App. D. C., 187. That case arose under the swamp and overflowed lands act of 1850, and the extension act of 1860, and in which the State of Oregon was the State supposed to have become entitled to the lands there in controversy, by the action of the Land Department of the United States Government. It is conceded by the appellant in this case that the case just referred to does substantially decide the first proposition here presented, though it is thought by counsel that this case is, in some respects, distinguishable from the case reported in 9 App. D. C. We think, however, that, with respect to the first proposition stated, the two cases are without substantial difference. That case was taken by appeal to the Supreme Court of the United States, where, by reason of the resignation from office of Secretary

Smith, the case abated. Warner Valley Stock Co. *v.* Smith, 165 U. S., 28.

But since that case was so disposed of in the Supreme Court, there has been made by that court a decision which would appear to fully embrace and conclude both of the propositions contented for by the appellant in this case, and which would seem to preclude further discussion of the subject. The case in which that decision was made is the case of Michigan Land and Lumber Co. *v.* Rust, 168 U. S., 589. That case, like the present, arose under the swamp and overflowed lands act of 1850, ch. 84; and in that case, as in the present, there had been no patent issued to the State for the lands in controversy; and the principal and leading questions were as to the construction of the act, and the effect of certain proceedings under the act, had and taken by the Secretary of the Interior as the head of the Land Department.

In that case, it was held, in an opinion of the court delivered by Mr. Justice Brewer, that whenever an act of Congress granting lands specifically provides for the issue of a patent, the legal title remains in the Government until such patent is issued, with power to inquire into the extent and validity of rights claimed against the Government; and although a survey had been made of the lands in controversy which indicated that they were swamp lands, it was still within the power of the land office *at any time prior to the issue of a patent* to order a resurvey, and to correct any and all mistakes made in the prior survey and report made to the office. The powers and duties of the Secretary of the Interior, as head of the Land Department, are continuing and coexist with the duration of the legal title to the land in the Government of the United States; and the question as to the particular person who may fill the office of Secretary of the Interior at the time of the action taken that gives rise to the controversy is wholly immaterial. The duty pertains to the office and not to any particular incumbent thereof, as distinguished from his predecessor or successor in office.

In the opinion of the court, in the Michigan Land and Lumber Co. *v.* Rust, just referred to, the court said:

"It will be perceived that the act (act of 1850) contemplated the issue of a patent as the means of transferring the legal title. In Rogers Locomotive Works *v.* American Emigrant Co., 164 U. S., 559, 574, it was said, speaking in reference to this matter, and after a full review of the previous authorities, 'when he,' (that is, the Secretary of the Interior) 'made such identification, then, and not before, the State was entitled to a patent, and on such patent the fee-simple title vested in the State. The State's title was at the outset an inchoate one, and did not become perfect, as of the date of the act, until a patent was issued.'" And, again, in the 12 course of the opinion, it was said: "And in New Orleans *v.* Paine, 147 U. S., 261, the question was presented as to the power of the department to order a new survey, and on page 266 the rule was thus stated: 'If the department was not satisfied with the survey, there was no rule of law standing in the way of its ordering another. Until the matter is closed by final action, the pro-

ceedings of an officer of a department are as much open to review or reversal by himself, *or his successor*, as are the interlocutory decrees of a court open to review upon the final hearing.' So, notwithstanding that a survey had been made, and that such survey indicated that the land in controversy was swamp land, and, therefore, passing under the act of 1850 to the State of Michigan, it was within the power of the Land Department, at any time prior to the issue of a patent, of its own motion, to order a resurvey, and correct by that any mistakes in the prior survey."

In that decision are cited many other decisions maintaining the same principle, and there are many cases in the Land Department to show an established practice there, in accordance with the doctrine so explicitly stated in the Michigan Land and Lumber Co. *v.* Rust, *supra*.

It follows that the decree of the court below must be affirmed; and it is so ordered.

Decree affirmed.

13 TUESDAY, *October* 18*th*, *A. D.* 1898.

DAVID BROWN, Appellant,
vs.
CORNELIUS N. BLISS, Secretary of the Interior. } No. 826. October Term, 1898.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

October 18, 1898.

WEDNESDAY, *October* 19*th*, *A. D.* 1898.

DAVID BROWN, Appellant,
vs.
CORNELIUS N. BLISS, Secretary of the Interior. } No. 826.

On motion of Mr. C. A. Keigwin, attorney for the appellant in the above-entitled cause, it is ordered by the court that said appellant be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of three hundred dollars.

14 Know all men by these presents that we, David Brown, of the city of San Francisco, in the State of California, as principal, and the American Surety Company of New York, of No. 100 Broadway, New York city, State of New York, as surety, are held and firmly bound unto Cornelius N. Bliss, Secretary of the Interior, in the full and just sum of three hundred dollars, to be paid to the said Cornelius N. Bliss, his certain attorney, executors, administra-

tors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between the above-named David Brown, appellant, and the above-named Cornelius N. Bliss, Secretary of the Interior, appellee, a decree was rendered against the said David Brown, appellant, and the said David Brown having been allowed an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Cornelius N. Bliss, Secretary of the Interior, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said David Brown shall prosecute his appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

DAVID BROWN. [SEAL.]

[Seal of American Surety Company of New York.]

AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By DAVID B. SICKELS, *Vice-president.* [SEAL.]
CORTLANDT S. VAN RENSSELAER, [SEAL.]
Attorney, 49225.

Sealed and delivered in the presence of—

——— ———.

Approved by—
R. H. ALVEY, *Ch. Justice.*

This bond is acceptable.
Oct. 21, 1898.

WILLIS VAN DEVANTER,
Solicitor for Appellee.

15 STATE AND COUNTY OF NEW YORK, *ss:*

On this 20 day of October, 1898, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order, and that the liabilities of said corporation do not exceed its assets, as ascertained

in the manner provided by law; and the said David B. Sickels further said that he was acquainted with Cortlandt S. Van Rensselaer and knew him to be one of the attorneys of said corporation; that the signature of said Cortlandt S. Van Rensselaer subscribed to the said instrument is in the genuine handwriting of the said Cortlandt S. Van Rensselaer, and was thereto subscribed by the like order of the said board of directors, and in the presence of him, the said David B. Sickels, vice-president.

[Seal of Notary Public.]

L. E. CARMAN,
Notary Public No. 18, New York County.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and they hereby are, and each one of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for or on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, Cortlandt S. Van Rensselaer, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 20 day of October, 1898.

[Seal of American Surety Company.]

CORTLANDT S. VAN RENSSELAER, *Attorney.*

[Endorsed:] No. 826. David Brown, appellant, *vs.* Cornelius N. Bliss, Sec'y of the Interior. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Oct. 21, 1898. Robert Willett, clerk.

16 UNITED STATES OF AMERICA, *ss:*

To Cornelius N. Bliss, Secretary of the Interior, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein David Brown is appellant and you are appellee, to

show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 22d day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

17 [Endorsed:] Oct. 22, 1898. Service of the within citation is hereby accepted. Willis Van Devanter, ass't att'y gen'l, solicitor for appellee. Court of Appeals, District of Columbia. Filed Oct. 24, 1898. Robert Willett, clerk.

18 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 17, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of David Brown, appellant, *vs.* Cornelius N. Bliss, Secretary of the Interior, No. 826, October term, 1898, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28th day of October, A. D. 1898.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

[Ten-cent U. S. internal-revenue stamp, canceled 10, 28, '98, R. W.]

Endorsed on cover: Case No. 17,166. District of Columbia Court of Appeals. Term No., 581. David Brown, appellant, *vs.* Cornelius N. Bliss, Secretary of the Interior. Filed October 31, 1898.